

Will Germany always really best the US (and the world) in doctrinal legal scholarship?

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Germany's Science Council (Wissenschaftsrat) has issued a report on the state of legal scholarship in the country. At first glance it is fairly interesting as an overview of the strengths and weaknesses of the discipline. The report has attracted, however, a rather unusual [response at Verfassungsblog](#) from a professor at Duke, Ralf Michaels, who seems to hold to theories of cultural determinism in legal education. According to Michaels, "German doctrinal scholarship will always be superior to that of other countries,.."

Always? I am not sure what to make of this. Is it an indirect insult, a polite (at least in Germany) way of saying that Germany will not ever be superior in Rechtsphilosophie or interdisciplinary scholarship? Even if one were to accept for a moment cultural determinism, and I do not, still one would have to wonder about the soundness of the assessment of the historical German legal culture-is the German public law tradition, and its strengths, to be reduced to doctrinal wizardry? Anyone with awareness of that tradition as it evolved from Hegel until the day Hitler came to power would, I think, have to say no.

It is not clear what Ralf Michaels thinks is wrong with American doctrinal scholarship – he only mentions that a lot of it is written by practitioners – whether this is empirically the case is questionable, but of course one finds an enormous amount of subtle and careful commentary on appellate and Supreme Court jurisprudence in a range of areas, from academics as well as practitioners. I have used German doctrinal tools like the Max Planck Encyclopedia of International Law, which is excellent, but also some of the US Restatements, which are of very high quality, too. I just can't imagine where Michaels gets the authority to assert with confidence the national or cultural stereotypes that he does (and I would add that I have learned a lot from reading recent German scholarship in public law and constitutional law theory by for example Armin von Bogdandy, Christoph Moellers, Christian Joerges, among others, which is of course not at all "doctrinal" at least not in the caricatural sense that Michaels suggests).

What is the real issue? All doctrinal scholarship, if illuminating, must make significant normative or evaluative judgments. I believe that can be shown. The question is what is the source of those judgments; is there an internal conception of the law itself as a normative order, or do we need to go "outside" and to what extent and to where, and how is that legitimate? On this as on many other matters, re-reading my much missed late colleague Ronnie Dworkin is very instructive.

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